

AMENDED IN ASSEMBLY JULY 9, 1996

AMENDED IN ASSEMBLY JUNE 18, 1996

AMENDED IN SENATE APRIL 29, 1996

AMENDED IN SENATE APRIL 15, 1996

AMENDED IN SENATE MARCH 4, 1996

SENATE BILL**No. 1369**

Introduced by Senator Kopp*(Coauthor: Assembly Member House)*

January 3, 1996

An act to amend Section 11370.1 of the Health and Safety Code, and to amend Sections 1000, 1000.1, 1000.2, ~~1000.3, and 1000.5~~ *of and 1000.3 of, and to amend, renumber, and add Section 1000.5 of*, the Penal Code, relating to drug abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 1369, as amended, Kopp. Drug abuse: deferred entry of judgment.

Existing law prescribes procedures for the referral to diversion of those persons charged with specified drug offenses.

This bill would provide instead that, in lieu of trial, the prosecuting attorney may make a motion to the trial court to defer entry of judgment with respect to any specified drug offense that is charged, provided that the offender offers a plea of guilty. Upon that motion and the defendant's offer of a plea of guilty, the court would be required to defer a finding

of guilt and entry of judgment, contingent upon the defendant's completion of an approved drug program. Upon the defendant's completion of the program, and upon the positive recommendation of the program authority and the motion of the prosecuting attorney, the court, or the probation department, but no sooner than 18 months nor later than 3 years from the date of the defendant's referral to the program, the court would be required to dismiss the charge or charges against the defendant.

The bill would ~~also~~ revise the drug offenses to which these provisions apply.

The bill also would provide that upon any failure of treatment or condition under the program, or if the defendant has engaged in criminal conduct rendering him or her unsuitable for defined entry of judgment, the prosecuting attorney, the court on its own, or the probation department may make a motion to the court for entry of judgment and the court shall render a finding of guilt to the charge or charges pled, enter judgment, and schedule a sentencing hearing.

The bill also would authorize the presiding judge of the superior or municipal court, or his or her designee, together with the district attorney and public defender, to agree in writing to establish and conduct a preguilty plea drug court program, wherein criminal proceedings are suspended without a plea of guilty for designated defendants and charges are dismissed upon satisfactory performance in the program.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11370.1 of the Health and Safety
2 Code is amended to read:
3 11370.1. (a) Notwithstanding Section 11350 or 11377
4 or any other provision of law, every person who
5 unlawfully possesses any amount of a substance
6 containing cocaine base, a substance containing cocaine,
7 a substance containing heroin, a substance containing
8 methamphetamine, a crystalline substance containing
9 phencyclidine, a liquid substance containing



1 phencyclidine, plant material containing phencyclidine,
2 or a hand-rolled cigarette treated with phencyclidine
3 while armed with a loaded, operable firearm is guilty of
4 a felony punishable by imprisonment in the state prison
5 for two, three, or four years.

6 As used in this subdivision, “armed with” means having
7 available for immediate offensive or defensive use.

8 (b) Any person who is convicted under this section
9 shall be ineligible for diversion or deferred entry of
10 judgment under Chapter 2.5 (commencing with Section
11 1000) of Title 6 of Part 2 of the Penal Code.

12 SEC. 2. Section 1000 of the Penal Code is amended to
13 read:

14 1000. (a) This chapter shall apply whenever a case is
15 before any court upon an accusatory pleading for a
16 violation of Section 11350, 11357, 11364, 11365, 11377, or
17 11550 of the Health and Safety Code, or Section 11358 of
18 the Health and Safety Code if the marijuana planted,
19 cultivated, harvested, dried, or processed is for personal
20 use, or Section 11368 of the Health and Safety Code if the
21 narcotic drug was secured by a fictitious prescription and
22 is for the personal use of the defendant and was not sold
23 or furnished to another, or subdivision (d) of Section 653f
24 if the solicitation was for acts directed to personal use
25 only, or Section 381 or subdivision (f) of Section 647 of the
26 Penal Code, if for being under the influence of a
27 controlled substance, or Section 4230 of the Business and
28 Professions Code, and it appears to the prosecuting
29 attorney that, except as provided in subdivision (b) of
30 Section 11357 of the Health and Safety Code, all of the
31 following apply to the defendant:

32 (1) The defendant has no conviction for any offense
33 involving controlled substances prior to the alleged
34 commission of the charged offense.

35 (2) The offense charged did not involve a crime of
36 violence or threatened violence.

37 (3) There is no evidence of a violation relating to
38 narcotics or restricted dangerous drugs other than a
39 violation of the sections listed in this subdivision.

1 (4) The defendant's record does not indicate that
2 probation or parole has ever been revoked without
3 thereafter being completed.

4 (5) The defendant's record does not indicate that he
5 or she has successfully completed or been terminated
6 from diversion or deferred entry of judgment pursuant to
7 this chapter within five years prior to the alleged
8 commission of the charged offense.

9 (6) The defendant has no prior felony conviction
10 within five years prior to the alleged commission of the
11 charged offense.

12 (b) The prosecuting attorney shall review his or her
13 file to determine whether or not paragraphs (1) to (6),
14 inclusive, of subdivision (a) apply to the defendant. Upon
15 the agreement of the prosecuting attorney, law
16 enforcement, the public defender, and the presiding
17 judge of the criminal division of the municipal court or a
18 judge designated by the presiding judge, this procedure
19 shall be completed as soon as possible after the initial
20 filing of the charges. If the defendant is found eligible, the
21 prosecuting attorney shall file with the court a
22 declaration in writing or state for the record the grounds
23 upon which the determination is based, and shall make
24 this information available to the defendant and his or her
25 attorney. This procedure is intended to allow the court to
26 set the hearing for deferred entry of judgment at the
27 arraignment. If the defendant is found ineligible for
28 deferred entry of judgment, the prosecuting attorney
29 shall file with the court a declaration in writing or state
30 for the record the grounds upon which the determination
31 is based, and shall make this information available to the
32 defendant and his or her attorney. The sole remedy of a
33 defendant who is found ineligible for deferred entry of
34 judgment is a postconviction appeal.

35 (c) All referrals for deferred entry of judgment
36 granted by the court pursuant to this chapter shall be
37 made only to programs that have been certified by the
38 county drug program administrator pursuant to Chapter
39 1.5 (commencing with Section 1211) of Title 8, or to
40 programs that provide services at no cost to the

1 participant and have been deemed by the court and the
2 county drug program administrator to be credible and
3 effective. The defendant may request to be referred to a
4 program in any county, as long as that program meets the
5 criteria set forth in this subdivision.

6 (d) Deferred entry of judgment for a violation of
7 Section 11368 of the Health and Safety Code shall not
8 prohibit any administrative agency from taking
9 disciplinary action against a licensee or from denying a
10 license. Nothing in this subdivision shall be construed to
11 expand or restrict the provisions of Section ~~1000.5~~ 1000.4.

12 (e) Any defendant who is participating in a program
13 referred to in this section may be required to undergo
14 analysis of his or her urine for the purpose of testing for
15 the presence of any drug as part of the program.
16 However, urine analysis results shall not be admissible as
17 a basis for any new criminal prosecution or proceeding.

18 SEC. 3. Section 1000.1 of the Penal Code is amended
19 to read:

20 1000.1. (a) If the prosecuting attorney determines
21 that this chapter may be applicable to the defendant, he
22 or she shall advise the defendant and his or her attorney
23 in writing of that determination. This notification shall
24 include the following:

25 (1) A full description of the procedures for deferred
26 entry of judgment.

27 (2) A general explanation of the roles and authorities
28 of the probation department, the prosecuting attorney,
29 the program, and the court in the process.

30 (3) A clear statement that in lieu of trial, the court may
31 grant deferred entry of judgment with respect to any
32 crime specified in subdivision (a) of Section 1000 that is
33 charged, provided that the defendant pleads guilty to
34 each such charge and waives time for the pronouncement
35 of judgment, and that upon the defendant's successful
36 completion of a program, as specified in subdivision (c)
37 of Section 1000, the positive recommendation of the
38 program authority and the motion of the prosecuting
39 attorney, the court, or the probation department, but no
40 sooner than 18 months and no later than three years from

1 the date of the defendant's referral to the program, the
2 court shall dismiss the charge or charges against the
3 defendant.

4 (4) A clear statement that upon any failure of
5 treatment or condition under the program, or any
6 circumstance specified in Section 1000.3, the prosecuting
7 attorney or the probation department or the court on its
8 own may make a motion to the court for entry of
9 judgment and the court shall render a finding of guilt to
10 the charge or charges pled, enter judgment, and schedule
11 a sentencing hearing as otherwise provided in this code.

12 (5) An explanation of criminal record retention and
13 disposition resulting from participation in the deferred
14 entry of judgment program and the defendant's rights
15 relative to answering questions about his or her arrest and
16 deferred entry of judgment following successful
17 completion of the program.

18 (b) If the defendant consents and waives his or her
19 right to a speedy trial or a speedy preliminary hearing,
20 the court may refer the case to the probation department
21 or the court may summarily grant deferred entry of
22 judgment if the defendant pleads guilty to the charge or
23 charges and waives time for the pronouncement of
24 judgment. When directed by the court, the probation
25 department shall make an investigation and take into
26 consideration the defendant's age, employment and
27 service records, educational background, community and
28 family ties, prior controlled substance use, treatment
29 history, if any, demonstrable motivation, and other
30 mitigating factors in determining whether the defendant
31 is a person who would be benefited by education,
32 treatment, or rehabilitation. The probation department
33 shall also determine which programs the defendant
34 would benefit from and which programs would accept
35 the defendant. The probation department shall report its
36 findings and recommendations to the court. The court
37 shall make the final determination regarding education,
38 treatment, or rehabilitation for the defendant. If the
39 court determines that it is appropriate, the court shall
40 grant deferred entry of judgment if the defendant pleads

1 guilty to the charge or charges and waives time for the
2 pronouncement of judgment.

3 (c) No statement, or any information procured
4 therefrom, made by the defendant to any probation
5 officer or drug treatment worker, that is made during the
6 course of any investigation conducted by the probation
7 department or treatment program pursuant to
8 subdivision (b), and prior to the reporting of the
9 probation department's findings and recommendations
10 to the court, shall be admissible in any action or
11 proceeding brought subsequent to the investigation.

12 No statement, or any information procured therefrom,
13 with respect to the specific offense with which the
14 defendant is charged, that is made to any probation
15 officer or drug program worker subsequent to the
16 granting of deferred entry of judgment, shall be
17 admissible in any action or proceeding, including a
18 sentencing hearing.

19 (d) A defendant's plea of guilty pursuant to this
20 chapter shall not constitute a conviction for any purpose
21 unless a judgment of guilty is entered pursuant to Section
22 1000.3.

23 SEC. 4. Section 1000.2 of the Penal Code is amended
24 to read:

25 1000.2. The court shall hold a hearing and, after
26 consideration of any information relevant to its decision,
27 shall determine if the defendant consents to further
28 proceedings under this chapter and if the defendant
29 should be granted deferred entry of judgment. If the
30 court does not deem the defendant a person who would
31 be benefited by deferred entry of judgment, or if the
32 defendant does not consent to participate, the
33 proceedings shall continue as in any other case.

34 At the time that deferred entry of judgment is granted,
35 any bail bond or undertaking, or deposit in lieu thereof,
36 on file by or on behalf of the defendant shall be
37 exonerated, and the court shall enter an order so
38 directing.

39 The period during which deferred entry of judgment
40 is granted shall be for no less than 18 months nor longer

1 than three years. Progress reports shall be filed by the
2 probation department with the court as directed by the
3 court.

4 SEC. 5. Section 1000.3 of the Penal Code is amended
5 to read:

6 1000.3. If it appears to the prosecuting attorney, the
7 court, or the probation department that the defendant is
8 performing unsatisfactorily in the assigned program, or
9 that the defendant is not benefiting from education,
10 treatment, or rehabilitation, or that the defendant is
11 convicted of a misdemeanor that reflects the defendant's
12 propensity for violence, or the defendant is convicted of
13 a felony, or the defendant has engaged in criminal
14 conduct rendering him or her unsuitable for deferred
15 entry of judgment, the prosecuting attorney, the court on
16 its own, or the probation department may make a motion
17 for entry of judgment.

18 After notice to the defendant, the court shall hold a
19 hearing to determine whether judgment should be
20 entered.

21 If the court finds that the defendant is not performing
22 satisfactorily in the assigned program, or that the
23 defendant is not benefiting from education, treatment, or
24 rehabilitation, or the court finds that the defendant has
25 been convicted of a crime as indicated above, or that the
26 defendant has engaged in criminal conduct rendering
27 him or her unsuitable for deferred entry of judgment, the
28 court shall render a finding of guilt to the charge or
29 charges pled, enter judgment, and schedule a sentencing
30 hearing as otherwise provided in this code.

31 If the defendant has performed satisfactorily during
32 the period in which deferred entry of judgment was
33 granted, at the end of that period, the criminal charge or
34 charges shall be dismissed.

35 Prior to dismissing the charge or charges, the court shall
36 consider the defendant's ability to pay and whether the
37 defendant has paid a diversion restitution fee pursuant to
38 Section 1001.90, if ordered, and an administration fee to
39 the probation department, if ordered, and has met his or
40 her financial obligation to the program, if any.

SEC. 6. Section 1000.5 of the Penal Code is amended
and renumbered to read:

~~1000.5.—~~

1000.4. (a) Any record filed with the Department of Justice shall indicate the disposition in those cases deferred pursuant to this chapter. Upon successful completion of a deferred entry of judgment program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The defendant shall be advised that, regardless of his or her successful completion of the deferred entry of judgment program, the arrest upon which the judgment was deferred may be disclosed by the Department of Justice in response to any peace officer application request made within five years of the arrest, and that notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830, made within five years of the arrest.

SEC. 7. *Section 1000.5 is added to the Penal Code, to read:*

1000.5. (a) *The presiding judge of the superior or municipal court, or a judge designated by the presiding judge, together with the district attorney and the public defender, may agree in writing to establish and conduct a preguilty plea drug court program pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. The drug court program shall include a*

1 regimen of graduated sanctions and rewards, individual
2 and group therapy, urine analysis testing commensurate
3 with treatment needs, close court monitoring and
4 supervision of progress, educational or vocational
5 counseling as appropriate, and other requirements as
6 agreed to by the presiding judge or his or her designee,
7 the district attorney, and the public defender. If there is
8 no agreement in writing for a preguilty plea program by
9 the presiding judge or his or her designee, the district
10 attorney, and the public defender, the program shall be
11 operated as a deferred entry of judgment program as
12 provided in this chapter.

13 (b) The provisions of Section 1000.3 and Section 1000.4
14 regarding satisfactory and unsatisfactory performance in
15 a program shall apply to preguilty plea programs. If the
16 court finds that (1) the defendant is not performing
17 satisfactorily in the assigned program, (2) the defendant
18 is not benefiting from education, treatment, or
19 rehabilitation, (3) the defendant has been convicted of a
20 crime specified in Section 1000.3, or (4) the defendant has
21 engaged in criminal conduct rendering him or her
22 unsuitable for the preguilty plea program, the court shall
23 reinstate the criminal charge or charges. If the defendant
24 has performed satisfactorily during the period of the
25 preguilty plea program, at the end of that period, the
26 criminal charge or charges shall be dismissed and the
27 provisions of Section 1000.4 shall apply.

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